GOVERNMENT OF THE VIRGIN ISLANDS OF THE UNITED STATES

DEPARTMENT OF PLANNING AND NATURAL RESOURCES
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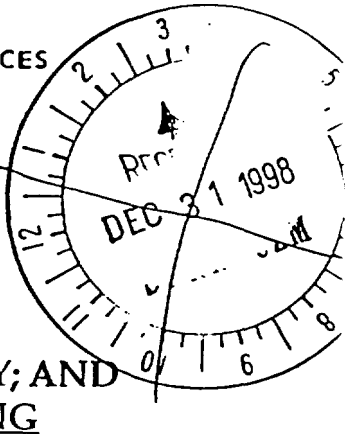
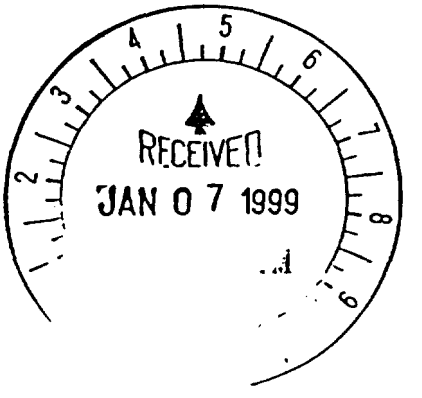


NOTICE OF VIOLATION; ORDER FOR REMEDIAL ACTION; NOTICE OF ASSESSMENT OF CIVIL PENALTY; AND NOTICE OF OPPORTUNITY FOR HEARING

CERTIFIED MAIL OR HAND DELIVERY



December 30, 1998

TO: MR. JOSE FELIPE
PRESIDENT & CHIEF OPERATING OFFICER
AT&T OF THE VIRGIN ISLANDS, INC.
ROOM 211B BUCCANEER MALL
ST. THOMAS, USVI 00802

ACTION NO. CZX-75-1996

RE: IN THE MATTER OF THE COMPLAINT OF THE ST. CROIX COMMITTEE OF THE VIRGIN ISLANDS COASTAL ZONE COMMISSION,

Complainant

vs.

AT&T OF THE VIRGIN ISLANDS, INC.,

Respondent

NOTICE OF VIOLATION AND ASSESSMENT OF PENALTIES

I. STATUTORY AUTHORITY

Pursuant to Title 12 § 913, and the implementing regulations, the Commissioner of the Department of Planning and Natural Resources is authorized to issue a Notice of Violation and Assessment of Civil Penalties to any person who violates any provision of the Coastal Zone Management ("CZM") Act or any regulation or order issued under the Act. Activities that constitute violations are defined to include, *inter alia*, "[u]ndertaking or in any manner threatening to undertake, any activity that may require a Coastal Zone Permit without first securing such a permit . . . [a]ny activity which is inconsistent with or in violation of a Coastal Zone Permit . . . [and f]ailure to timely submit to the Committee or the Commissioner, in accordance with the provisions of a CZM permit, any required information, or failure to submit such information in a complete and accurate fashion." 12 V.I.R.R. 913-1 (a).

Civil penalties of up to $10,000 per day for each day during which a violation occurs may be assessed pursuant to the administrative procedures set out in the rules and regulations promulgated by the CZM Commission. 12 V.I.C. § 913(c).

II. FINDINGS OF VIOLATION

1. Under cover letter of June 3, 1994, AT&T of the Virgin Islands, Inc. ("AT&TVI"), a wholly owned subsidiary of AT&T Corp., filed an application with the St. Croix Committee of the Coastal Zone Management ("CZM") Commission

for a permit to construct a fiber optic cable facility at Plot #4A Estate Northside, St. Croix, United States Virgin Islands.

2. On its application form and the Environmental Assessment Report ("EAR") form, AT&TVI variously identified itself as the applicant, the owner, the owner of upland property and the developer. However, the Proof of Legal Interest form was signed by Phillip Sitton, President of AT&TVI, as the Option Holder for Parcel #4A Estate Northside, St. Croix.

3. AT&TVI's permit application made, among other things, the following statements and representations in the short form Environmental Assessment Report ("EAR") included in the application:

a) [a] water quality monitoring program will be implemented to monitor drilling muds;

b) [d]irectional drilling is being employed to protect the shallow near shore coral reef;

c) [t]he alternative chosen is the most ecologically sensitive to the marine environment; and

d) directional drilling will eliminate impacts to the near-shore reef [and] the cable will emerge in an area of primarily seagrass & algae. Impacts to these sparce [sic] beds will be minimal . . .

4. On the EAR form, the applicant was to check the boxes "which best describe the types of coastal and submarine habitats existing within the immediate project area, and within 1/4 mile (1,320 ft.) from the project boundaries." AT&TVI checked the boxes for "coral, including soft corals," "seagrass or algal beds," "hard, rocky bottom," "sand bottom," "rocky shore," and "developed or urbanized waterfront." The box for "muddy bottom" was not checked.

5. The short form EAR referred to the longer June 1994 EAR attached as a separate document. In that document, later specifically incorporated into its permit, AT&T represented:

a) [E]ight 4" conduits will run from the inshore manhole into the sea. Section 3.0.

b) AT&T 'built cable landing stations in such locations as Hawaii, Guam, St. Thomas, Florida, California, Puerto Rico, and Jamaica. In all of this [sic] endeavor, AT&T has never compromised its values for being a world leader in protecting the environment . . .' Section 3.0.

c) Between 80 and 90 feet [offshore] there is a narrow area of exposed pavement, with scattered hard and soft corals and sponges. The cables will be laid in such a manner to avoid damage to the reef organisms. Section 3.0.

d) [E]ight 5.75" OD (outer diameter) drill steel conduits would be drilled out to a water depth of 45 ft. Section 5.01, Section 5.03A.

e) The directional drilling would be computer controlled and drilling mud will be recycled. Section 5.01, Section 5.03A.

f) Any escaping mud will be collected so as not to impact the surrounding marine communities. Section 5.01, Section 5.03A.

g) The hard pavement sea floor out to the 20-foot depth 'is colonized by hard and soft corals, algae and sponges.' Section 6.02.

h) The slope down to 27 feet 'is colonized by abundant hard and soft coral and sponges.' Section 6.02.

i) The shelf at the 75 to 80 foot depth 'is again colonized by hard and soft corals and sponges.' Section 6.02.

j) The shoreline environment and the nearshore submerged pavement area will be undisturbed. Directional drilling will be utilized to take the cable from a manhole on the east side of the West End Road to a depth of 45 ft. offshore. This will not alter any the [sic] geologic or marine resources of the coastline. Section 6.02.

k) Eight 4" conduits from the cable land facility will emerge from the seafloor at 45 ft. of depth approximately 1000 ft. offshore. Section 6.05a, 6.06.

l) Anytime mud escapes the driller is aware of it by a drop in pressure in the line. Section 6.05d, 6.06.

m) If a pressure drop is noted a shoreline survey will be conducted to look for escaping mud. Any and all mud will be collected. Section 6.05d, 6.06.

n) When the drill emerges at a depth of 45 ft. mud will escape into the marine environment. The drill and the mud pump will be immediately stopped when the break through is made thus limiting the amount entering the marine environment. The mud is heavy and should settle out quickly. The area of mud will be marked and documented and then the mud will be collected through vacuum suction. Section 6.05d., 6.06.

o) All day tanks and piping will have spill basins of adequate size to contain a 100% capacity spill. Section 6.11.

p) During the 45 day directional drilling operation there will be the potential for drilling muds to escape into the marine environment. Detection of such leaks is a part of the Water Quality Monitoring Program. If such leaks occur and when the mud escapes at the termination of the drilled hole, it will be collected with vacuum suction so as not to impact the surrounding marine communities. Section 6.11.

q) Directional drilling was selected as the best possible method to protect the nearshore pavement reef communities. Though this method is the most expensive of the three [alternatives for placement of the cable into the sea], AT&T has chosen this option to protect the environment. Section 8.00.

r) Numerous methods will be employed to reduce the impacts of the project on the environment. . . Several alternatives were evaluated as to their ecological and economic feasibility. The directional drilling was chosen to protect the near shore reef communities despite the fact that it was the most costly of the alternatives. . . . A water quality monitoring program will be implemented to monitor the impact of the project on the water quality and the marine environment. Section 9.00.

s) The cable landing will not be impacting the shoreline or nearshore marine communities. There is the potential for the escaping of limited amounts of drilling mud. Every effort will be made to contain the mud and to retrieve 100% of what is introduced into the sea. Section 10.0 at p. 10-1.

6. Section 6.12 of the EAR was identified as the Water Quality Monitoring Plan. The Plan made the following statements and representations:

a) The drill 'mud, actually a clay, is kept at pressure within the drilled hole, keeping the hole open . . . '

b) When there is a breakthrough the pressure on the mud immediately drops and the pumps will be cut off.

c) The drilling mud will be vacuumed up once the drilling for that conduit is completed.

d) Only small plumes are anticipated, however, the emergences will be monitored, the amount of escaping mud document [sic], as well as, the success of the clean up.

e) While drilling, if a fissure is encountered, mud could be channeled down that fissure. The pressure in the hole drops and the location of the lose [sic] is determined. When this occurs and it appears that this leak is near the marine environment, shoreline and nearshore surveys will be conducted to look for mud plumes.

f) The mud is extremely heavy and will settle out almost immediately. Water samples will be taken at the first emergence and the length of time the material remains in the water column, and the extent of spreading of the material will be noted. The material will then be

collected with the use of a suction device. If the material is found to settle out much slower than anticipated or to spread over too wide an area, silt controlling measures will be required.

g) The extent of the settled plume will be marked and photographed. The area will be cleaned and the area will be rephotosurveyed.

h) To analyze the impact on water quality, samples will be collected at depth 10 ft. from the emergence. The sample will be analyzed for NTU's with the portable NTU meter. Samples will then be taken on an hourly basis until the NTU's return to ambient. (Ambient will be determined by the average of 3 samples taken at the same depth removed from the area of impact.) The extent of the settled plume will be marked and photographed. The area will be cleaned and the area will be re-photosurveyed.

i) In the event of any water quality emergency or when NTU's, TSS or secchi disk readings fall outside the allowable limits, the Division of Environmental Protection (DEP) will be immediately notified in person or by phone. Methods will then be worked out to reduce the sedimentation. Section 6.12, at p. 6-97.

7. The Department's concern regarding the potential for environmental harm posed by the drilling process, with the potential escape of drilling mud identified as having the greatest potential impact, was conveyed to AT&T in the June 22, 1994 Notice of Deficiencies.

8. In response to specific questions regarding, *inter alia*, the mechanism to block fissures to block further mud discharge and the maximum quantity of mud that might escape through a fissure or bore hole, AT&T stated on July 13, 1994 in relevant part, as follows:

a) The possibility of hitting a fissure is slight, and the possibility for mud escaping into the marine environment is even slimmer. As soon as the pressure drops (indicating loss of mud) the drilling operation is stopped, with the stopping of the drilling rig and the pumping of mud, there is no pressure to force the mud out and along the fissure.

b) [D]uring the drilling of the last 100 feet of conduit, water can be substituted for mud. This water is pumped to the head of the drill and will flush the remaining mud back up out of the hole, this would result in the loss of only water when the drill emerges at 45 ft. (Salt water or fresh water can be used.)

c) Substituting grout for mud and shutting down for 24 hours to allow the grout to seal, using biodegradable mud which breaks down within 24 hours, and changing drilling speed were other methods that AT&T represented it would employ to prevent mud loss.

d) Water will be substituted for the mud during the last 100 ft of drilling and the emergence will result in the loss of water rather than the loss of mud.

e) Monitoring of the marine environment as well as water quality" for impacts of directional drilling was promised.

f) Monitoring of the drilling operation will include establishment of a benthic baseline within the sparse seagrass community in which the cables will emerge and monthly monitoring during drilling and for two months following the drilling to look at impacts to the community.

g) In the unlikely event that mud escapes it will be recovered by digging or building a recovery pit and pumping the mud back to the drilling rig. If the mud is escaping underwater, it will be recovered by a small diameter vacuum suction device. Further, mud loss offshore will be prevent [sic] using the methods outlined in response to Question #1.

9. In the same document, AT&T responded to the Department's concerns regarding fuel transfer, storage and accidental spillage of fuel for the drilling rig with, *inter alia* "[t]he drilling rig is powered by a Diesel engine. Fuel will be supplied by a local contractor and transferred to the engine which has its own self-contained storage tank."

10. On August 22, 1994, AT&TVI submitted to CZM four full size marine charts labeled "AT&T Caribbean Cable Route Survey" and bearing the AT&T logo and identified as Charts 11 through 14. A Corridor is mapped on all four charts and each is identified as "cable easement corridor (eight cable conduits)." One shows the corridor approximately three quarters of the way to St. Thomas, and the other three show the corridor from St. Croix at lesser distances.

11. On August 29, 1994, the Division of Environmental Protection ("DEP") of DPNR reviewed AT&TVI's CZM Permit Application and "conditionally approved" a Water Quality Certification ("WQC"). The Comments or Special Restrictions mandated a "siltation device (vacuum suction) shall be on site at all times during directional drilling to minimize the impact of drilling mud to the marine environment," and "**All water quality degradation (class B) MUST be reported to DEP IMMEDIATELY** including but not limited to mud escapes into the marine environment. NTU values shall not exceed three (3) and TSS value shall not exceed 10 mg/l." (emphasis in original.)

12. By letter dated September 12, 1994, from an AT&TVI contractor to the U.S. Navy, AT&T confirmed that it had decided the week before to change the route of the first cable laid under the permit it was applying for from CZM. Notification of the change was not provided to the Department.

13. The September 19, 1994 Decision Letter stated that the CZM Committee met on September 7, 1994 to consider the permit application for the Cable Landing Facility and the Committee's decision was based on, *inter alia*, the following findings and conclusions:

a) Above ground piping and storage tanks will have spill catchment basins capable of containing 100% of the spill.

b) The above ground piling [sic] and storage tanks (day tanks) should have spill catchment basins to contain 110% of the spill if they are located in the open. This will allow for containment of fuel oil and rainwater.

c) Staff inspected the site with an AT&T representative and dived along the shore to depths of 50 feet," and confirmed that the descriptions of the site in the EAR "are generally correct to these depths.

d) Impact of the development on the offshore marine environment is primarily related to impacts on water quality . . .

e) A water quality monitoring program will be implemented to monitor the impact of the project on water quality and the marine environment.

f) Several aspects of this project have the potential to adversely impact offshore water quality: 1) Sediment entrained in runoff from the site during and after construction, 2) oil spills from diesel fuel storage areas and generators, 3) hydrocarbons from the parking lots, and 4) release of drilling muds from a fissure or when the drill breaks through to the surface at a depth of 45 feet.

g) By choosing to directionally drill under the seabed, AT&T should minimize damage to the marine environment. The major potential impact of this drilling is the accidental release of drilling muds. According to the Permittee, this can be detected by a drop in pressure in the line. If this occurs, drilling and pumping of mud can be immediately stopped to minimize mud release. The heavy mud should settle out quickly and the Permitee plans to collect released mud through vacuum suction. It is imperative that clean-up of the heavy drilling muds occurs immediately to prevent smothering of corals, sponges, and other benthic organisms.

h) No rare or endangered fauna were observed on the site (EAR, 6-90), although the EAR stated that a number of endangered species of fauna may be found in the area and occasionally

utilize the site. The beach, as described in the EAR, is not suitable for turtle nesting. However, leatherback turtles have been seen in offshore waters to the south of the site and green and hawksbill turtles were seen in dives off the property and just south of the property in April and May 1994 (EAR, 6-90).

i) The impact of both the land based and marine portions of the development on endangered species should be minor.

14. The St. Croix CZM Committee conditionally granted CZM Permits No. CZX-27-94L and CZX-28-94W and in the September 13, 1994 Decision Letter gave notice that the Special Conditions it imposed on the permits were specifically tailored to assure "that the development as finally proposed, incorporates to the maximum extent feasible mitigation measures to substantially lessen or eliminate any and all adverse environmental impacts of the development."

15. The Special Conditions included one provision that "above ground piping and storage tanks (day tanks) shall have spill catchment basins to contain 110% of the spill if they are located in the open," and another that "[m]easurements for turbidity shall at no time be allowed to exceed 3 NTU."

16. By letter dated September 19, 1994 AT&T reported on its progress with regard to the Special Conditions approved by CZM on September 7, 1994. In response to the catchment basin requirement, AT&T stated that "[a]ll above ground piping and storage tanks are located within the building generator room and not in the open." A copy of a portion of the Water Quality Monitoring Plan from the EAR was attached and referenced as the response to water quality issues.

17. The Comments or Special Restrictions in DEP's Conditional Water Quality Certification were also made Special Conditions of minor Permit No. CZX-28-94W ("water permit").

18. By letter of April 24, 1995 to Senator Adlah Donastorg, Jr., Chairman of the Legislative Planning and Environmental Protection Committee, AT&TVI acknowledged the Legislature's concern with environmental issues raised at the April 20, 1995 hearing that was part of the permit ratification process. "The impact of the drilling for the submarine cable conduits as the drill emerges from the seabed . . ." was paramount. In the letter, AT&TVI described the "highly productive nearshore reef . . ." extending into "a less colonized deep water pavement reef . . ." recorded during benthic surveys in 1994. Both the shallow reef and the nearshore reef slope were "colonized by hard and soft corals, as well as, a variety of sponges." It also noted "another area of exposed pavement . . . colonized by coral and sponges . . ." between the 75 and 80 foot depth contours.

19. In its April 24, 1995 letter, AT&T represented that "recognizing the importance of the nearshore reef community [it] elected to employ directional drilling under the reef rather than trenching or laying cables over the reef, both of which would be far more impacting. It should be noted that the directional drilling is considerably more costly that [sic] either of the other methods considered."

20. In the same letter, additional representations by AT&T included:

a) The potential impact on the marine environment 'which was of most concern was the potential escaping of drilling mud . . .' but AT&T's drilling company could use sea water as a drilling lubricant, 'thus eliminating this issue.'

b) The amount of material which will reach the environment will be small since the drill and circulating pumps will be immediately stopped when the break through occurs.

c) Since the conduits will be drilled one at a time, any problems or concerns noted during the first conduit can be anticipated during the subsequent drillings.

d) The narrowest area of the deep water reef will be marked with bouys during the cable landing procedures, and the cables will be laid through this corridor.

21. The letter concluded "AT&T used similar methods in their development of the cable landings in Guam, Hawaii, California, Florida, Puerto Rico, St. Thomas, and other locations."

22. On or about November 13, 1995, AT&TVI, Inc. was issued Coastal Zone Permit No. CZX-28-94W. The permit specifically incorporated by reference drawings of the project and the EAR.

23. Coastal Zone Permit No. CZX-28-94W authorized "the Permittee to drill eight 5.75-inch OD cable conduits to water depth of 45 feet and placement of same cable on the ocean floor seaward of Plot 4-A, Estate Northside, near the town of Frederiksted, U.S.V.I."

24. Section 5 (c) of Coastal Zone Permit No. CZX 28-94W states:

> The Permittee affirms that the information and data which it provided in connection with its permit application is true and accurate and acknowledges that if subsequent to the effective date of this permit such information and data prove to be false and or inaccurate, the permit may be modified, suspended or revoked in whole or in part, and that the Commissioner may, in addition, institute appropriate legal proceedings.

25. Section 5 (i) of Coastal Zone Permit No. CZX 28-94W states:

> [T]he development authorized by this permit shall be maintained in a safe, attractive and satisfactory condition and in accordance with the description, plans or drawings approved by the Commissioner.

26. Section 5 (n) of Coastal Zone Permits No. CZX-28-94W states:

> It is specifically understood that all the foregoing covenants and agreements, as well as other terms and special conditions hereby agreed to [by] the Permittee, are to be well and faithfully kept by the Permittee and failure to keep same will result in revocation of this permit.

27. Special Conditions of CZM Permit No. CZX-28-94W stated in pertinent part:

> 6(b) The Water Quality Monitoring Program shall be continued for 6 months after completion of construction to ensure that all permanent erosion and sediment devices and landscaping is adequate to protect offshore waters. Measurements for turbidity shall at no time be allowed to exceed 3 NTU.
>
> 6(d) [S]iltation device (vacuum suction) shall be on site at all times during directional drilling to minimize the impact of drilling mud to the marine environment.
>
> 6(e) All water quality degradation (class B) must be reported to DEP immediately including but not limited to drilling mud escapes into the marine environment. NTU values shall not exceed (3) and TSS value shall not exceed mg/l.
>
> 6(f) Work shall be performed in a manner that maintains existing water quality. Water quality shall not be degraded for more than two (2) hours.

28. AT&T filed a Baseline Study dated November 13, 1995, as part of the Water Quality Monitoring Plan. In that document, AT&T recognized that the purpose of the Water Quality Monitoring program was "to help insured [sic] that minimal impacts occur to the marine environment during the cable landing's construction . . ." and that "through careful planning and monitoring, . . .

potentially devastating impacts can be minimized and abated. The potential impacts identified as "devastating" were that "sediments can greatly reduce the transmission of light through the water column. The lowering of the transparency of seawater can greatly effect sessile marine organisms that rely on the transmission of light for their existence", and "settling sediments can also smother coral colonies and prevent larval settlement of reef organisms".

29. Plot No. 4A, Matr. 37BA of Estate Northside, St. Croix, was transferred by warranty deed dated January 8, 1996 to Transoceanic Communications, Inc. ("TOCI"), a subsidiary of AT&T Corp.

30. AT&TVI assigned all of its "right, title and interest in and to the Option Agreement dated 11/10/93" to TOCI on February 23, 1996. The option was the only legal interest ever held by AT&TVI in the real property that was the subject of its cable facility permits.

31. Effective March 20, 1996, AT&T Submarine Systems, Inc. ("AT&TSSI"), another subsidiary of AT&T Corp. entered into a contract with A&L Underground, Inc. ("A&L") retaining A&L to conduct the drilling project for which AT&TVI held the St. Croix CZM permit.

32. When the drilling for the cable conduits for the St. Croix fiber optic cable facility commenced on April 12, 1996, the only legal interest relating to the project held by the Permittee was the permit itself.

33. AT&T's April 13, 1996 Directional Drilling Report by Brian Crawford, identified in his e-mails as AT&T On-site Representative, St. Croix, documented a violation on the first hole: "Drilling started. 220 feet into the first bore, the mud stops returning, drilling continues." The drilling reports, addressed to various

AT&T employees and agents, were not provided to the Department until October 16, 1998, in response to a Request for Information.

34. The Comments to the April 18 reports regarding bore #1, which was commenced on April 13, are "still no drilling mud return flow from the bore."

35. AT&T VI began discharging drilling fluid into coastal waters and across Territorial submerged lands at least as early as April 21, 1996, when it reportedly "started pulling/reaming pipe into bore #1." The pipe was attached to a reamer, a drill head used to enlarge the hole, and pulled back toward land from the end of the hole that was open onto the sea floor.

36. Procedures called reaming and backreaming were employed to enlarge holes that had been drilled from the land side and opened on to the sea floor. During reaming, large quantities of drilling mud are pumped into the hole to keep it open. The drilling fluid cannot be contained in the open hole and the procedure was virtually guaranteed to result in significant discharges.

37. The reaming and back reaming procedures were neither presented to nor approved by CZM and differed greatly from the environmentally sound procedure described in detail by AT&T during the permit application process.

38. AT&TVI's Sixth Monthly Monitoring Report of April's activities was filed with CZM and DEP in May and noted that "a mechanical failure interrupted drilling for several days. The drilling mud is being well contained and . . . the drillers and the owner's representatives have continued to be responsive to environmental concerns." Later in the Report, it was stated that "[t]he drilling of the conduits has not resulted in the introduction of drilling mud into the environment. Throughout the drilling of the first conduit, drilling mud was lost into the hole, but none emerged into the environment. It is likely that this mud

was lost in the many crevices within the bed rock. . . the drilling mud has not yet broken through . . . No negative impacts occurred during the sixth month (April 1996) of construction on the AT&T site."

39. At the St. Croix site, reaming was again reported by AT&T's On-site Representative to AT&T stateside divisions May 2, 3 and 4, 1996.

40. On May 6, 1996, AT&T amended its contract with A&L to allow for holes up to three times the size that were permitted.

41. The May 10, 14, 15, 1996 reports documented reaming. The May 25 report noted that the supply of bentonite ran out and on May 28, it was reported that more arrived.

42. AT&T's St. Croix daily directional drilling report for June 18 documented reaming, and the one for June 19 noted that one of the larger holes was ready to pull in a bundle of four pipes, another large hole was about to start, and the drillers "have plenty of mud . . ."

43. On June 20, 1996, contractors retained by AT&T to photograph and map the seafloor at Butler Bay, St. Croix, videotaped the site. The video shows massive quantities of drilling fluid pollutants flowing across the sea bottom in a broad river.

44. The Eighth Monthly Monitoring Report, dated July 15, 1996 and covering drilling activity in June 1996, documented a release and discharge of drilling mud but alleged that a "minimal amount of mud were (sic) introduced to the sea floor," and that "a large cloud of sand and mud. . . " was created by back reaming that "did not rise higher than a few feet from the bottom . . ." but "everything settled out." The report additionally documented a "small volcano of clippings and sand" with a "small plume of mud [that] flowed out of the

volcano cone" and reported that . . . [t]he mud is extremely heavy and only becomes suspended when agitated." The report went on to state that within a week the mud was buried in sand and "no negative impacts from the mud were noted."

45. Reaming of the 16 inch hole, almost three times as large as was permitted, is recorded in AT&T's July 22, 24, and 26 St. Croix daily directional drilling reports to its stateside offices.

46. The Ninth Monthly Monitoring Report, the only report to the Department, dated August 17, 1996 and covering drilling activity in July 1996, indicated minor releases and discharges associated with emergences of the drilling pipe and back reaming of the hole, all followed by assurances that the material had settled out, did not enter the water column, was not suspended absent agitation, was buried by sand in a week, and resulted in no negative impact.

47. AT&T's St. Croix on-site representative reported to the stateside offices that on August 6 the drilling was stopped "so more drilling mud could be added to the hopper." The arrival of the big drill rig to "enlarge the hole to the required 18 inches" was reported on August 13. The August 15 report set out the plan to use the new rig to "start reaming the new pilot hole to 18"." On August 23 the process of "attaching the 18" drill head to commence reaming later today" was reported, and back-reaming to the larger size was in progress on August 30.

48. In contrast, the Tenth Monthly Monitoring Report filed with the St. Croix CZM and DEP, dated September 16, 1996 and covering drilling in August 1996, described minor releases and discharges. This report stated "[t]he larger hole drilling did result in the out put of drilling mud into the marine environment"

but that it caused "minor impacts." In addition, this report repeated the claims of quick settling and sand burial. All were reported to cause "only minor impacts . . ." because the area was "sparsely colonized. . ." The report closed with the litany "[n]o negative impacts. . . "

49. Jim Rayot, the AT&T Cable Station manager, commented on the "string of bad luck" associated with the St. Croix drilling project in his report to AT&T of September 3 that another hole has failed and that "they will now drill 8 separate holes."

50. Eight holes were successfully drilled at the St. Croix site between September 3, and September 25, 1996.

51. Jim Rayot reported to AT&T by e-mail dated September 26, 1996 that he dove the St. Croix drill site that day. He noted nine pipes remaining in the water requiring cutting and removal. He further reported that "the 4 large holes (14-18 inch ones that were abandoned) have a considerable amount of drilling mud (8-12 inches deep) surrounding the area where they exit the sand (sea floor). The area around each hole is approximately a circumference of 100 feet. Although the mud is not an environmental hazard, it does present an opportunity for local fishermen and conch harvesters to take issue with us (AT&T) by filing a complaint with the VI Fish and Wildlife Department. The area in question is a commonly fished (fish pots) area. It is also a popular area for conch. I found a large queen conch dead in a pile of drilling mud? We have discussed such options as; the mud could be removed (vacuumed) or possibly spreading it over a much larger area and mixing it into the sand??"

52. Michael Quain, Manager of Shore End Installation for AT&T commented on Rayot's St. Croix report on September 28, 1996 as follows: "[A]s far

as I'm concerned, it is A&L's responsibility for the clean up if required. Weren't we paying for the environmentalist during drilling to check for such things??? As I mentioned in our telephone conversation, I thought this issue was a contractor responsibility. . . I read Jim Rayout's [sic] report and he states that a queen conch was observed dead in the middle of the spoil near the pipe. Is he insinuating that the spoil killed the conch??? If not he shouldn't even have mentioned it. . . . Another question, why is he doing an inspection when it is again up to the environmentalist we're paying?"

53. By fax dated September 29, 1996, three days after Jim Rayot recorded his personal observations of the drilling mud discharge across the floor of Butler Bay, St. Croix, Andrew Kelly, Supervisor AT&TSSI, wrote to the president of A&L, the drilling company, thanking him "for the outstanding efforts of the A&L crew in St. Croix. Under the supervision of Terry Williamson, they have done a very good job in sometimes difficult circumstances. It is due to their efforts that A&L Underground will receive RFP's from AT&T for our upcoming projects that require directional drilling."

54. No clean up was attempted throughout the drilling process and the vacuum suction required by the permit to be present on site at all times was never brought to the site.

55. AT&T's St. Croix environmental monitor, BioImpact, Inc. sent a memo, dated October 8, 1996, to CZM, not DEP as required by the permit and AT&T's covenants in its EAR, describing one "ovoid shape" drilling mud release "covering an area running 50 feet out." "[T]he mud is extremely heavy and acts as a liquid. It is only when is stirred up that it enters the water column and then it rapidly settles back out in a matter of minutes. . . [P]otential impacts to the

coral reef however, do exist if we get a large ground swell before the mud becomes well mixed with the sand or becomes completely buried or colonized."

56. The Eleventh Monthly Monitoring Report of the St. Croix project, dated October 12, 1996 and covering drilling activity in September 1996, reported that eight conduits were successfully drilled in the month of September. Mud plumes were noted from the two "unfortunate" failed bore holes, that allegedly "quickly resettled out of the water column." A "small 'frac-out' of drilling mud . . . at the base of the reef" was documented in this report. Cleanup was promised, to follow a week of monitoring. No negative environmental impacts were again alleged. "A report on the 'frac-out' and clean up will be forthcoming." Mud plumes were acknowledged, allegedly settling out in less than an hour. Exposed mud at the site of a "vent pipe" was noted, and "an assessment of the site will be made and clean-up procedure, if necessary, will follow."

57. By letter dated October 14, 1996, AT&T's environmental monitor informed AT&T that the divers had not removed pipes and other debris that remained on the sea floor.

58. The fact and magnitude of the huge volume of releases at AT&T's St. Croix site were discovered through the Department's independent investigation. On October 17, 1996, DEP was informed by concerned citizens of potential violations of the water quality standards for Coastal Waters of the Virgin Islands in the near-shore drilling site associated with the AT&TVI's cable landing facility at #4A Estate Northside, St. Croix.

59. On October 18, 1996, DEP and CZM performed a multi-media Reconnaissance Inspection (RI) at the construction and drilling sites, respectively. A marine survey revealed that drilling fluid had been deposited in large

quantities on the sea floor around the emergence zone (the location where the drill head emerged from the sea floor) and the thickness of the deposits ranged from 2 to 5 inches to two feet deep. The deposits were so large that DPNR was unable to determine the boundaries of the mud layer covering the sea floor around the emergence zone during the first survey. Additional assessment that day revealed an accumulation of drilling mud at the base of the near shore reef, also known as the "frac-out" site.

60. DEP, in conjunction with the Division of Fish and Wildlife (VIF&W), performed a follow-up marine survey at the drilling site in Butler Bay on October 25, 1996 and it revealed that a much more comprehensive marine investigation at the drilling site would be required in order to satisfactorily address DPNR's concerns. The October 18, 1996 findings were confirmed.

61. By fax to Andrew Kelly, AT&TSSI, dated October 25, 1996, AT&T's environmental monitor again addressed disposal of the pipes, voicing "considerable doubt as to whether they would dispose of [sic] at the Anguilla Land Fill. If questioned in court I would have to state that I was told by divers from Cruzan Divers that they were dumped at the artificial reef. I would also have to state that AT&T was advised. If we were to get letters that stated that the pipes were properly disposed of at the Anguilla Land Fill, I think we would have a firmer position."

62. In this same fax, the monitor confirmed that the drilling material discovered by the Department on the floor of Butler Bay had been deposited during drilling of the two over-size holes.

63. Kelly spoke to the issue of the pipe bundles remaining on the floor of Butler Bay in his e-mail to the environmental monitor of October 28, 1996, copied

to ten AT&T addressees. Mr. Kelly "stress[ed] that AT&T had no involvement in this evolution. Cruzan Divers' contract is with A&L Underground not AT&T. This is the root of the problem. As we have no contract with Cruzan Divers, nor are we paying them in any way, we have very little leverage in making Cruzan Divers comply with our requests. However we will continue to try to rectify this situation."

64. In the same e-mail, he sought confirmation of clean up procedures and "that the mud near the reef . . . [and] at the pipe emergence points must be picked up."

65. In an October 30, 1996 facsimile, AT&T informed DEP that the removal of a large vent pipe led to "a large increase of the mud on the bottom" of the sand flats near the emergence site, but failed to define the quantity or amount of the deposits. Additionally, DEP was told that a "frac-out" occurred at the base of the reef. The facsimile stated these problems were noted on Saturday September 28, 1996.

66. In early November, VIF&W performed a marine investigation of the emergence zone of the drilling site and reported that the primary area of drill mud occupied an area of 5, 227 square meters. It also found that approximately 72% of the benthic community was covered by drill mud. Calcareous sands without drill mud comprised only 6% of bottom cover. Benthic communities on which the drilling fluid settled had been smothered due to anoxic conditions created by the mud.

67. On October 25, 1996, VIF&W had observed that 65% (59) of the 91 milk conch observed in the drill mud were dead. On November 8, 1996, 89% (49) of the 55 milk conch observed in the drill mud were dead.

68. DEP and VIF&W concluded that the huge discharge of drilling material St. Croix's near shore waters posed a substantial likelihood that the flora and fauna living and feeding in that marine environment, including the hard ground coral and coral reefs, would be exposed to harm and damage through suffocation, loss of food supply and ingestion of the mud.

69. Documents filed by AT&T during its permit application process confirmed that prior to commencement of its St. Croix fiber optic cable project, the near shore marine waters and seabed fronting AT&T's fiber optic cable facility at Butler Bay, St. Croix were characterized by clear waters, a healthy and diverse community of seagrass beds, algae, sponges, conch, hard and soft corals, and a seabed uncontaminated by drilling mud.

70. Part I of II of the Twelth [sic] Monthly Monitoring Report was filed by AT&T on November 2, 1996. In that report it was noted that the "rapid settling [of the drilling fluid] is beneficial in the fact that it limits the impacts to long term water quality, but is extremely detrimental to the reef." The drilling fluid mud at the emergence sites was reportedly "settling out into depressions and slightly flowing down hill. . . it is impossible to note how deep the mud is from viewing it on the surface. (It should be noted that several of the commercial divers have stated that they have also encountered mud buried below the sand which is not visible but they break through because they are walking across the bottom.) . . . On October 19, 1996, . . . it was noted that mud was flowing laterally into one of the holes created by a diver at a depth of about 6 inches. Within 30 minutes 2 inches of mud had flowed into the hole from the sand. . . It would appear that we had interrupted a subsurface lateral flow of mud through the sand. . . Because of the significance of the subsurface movement, we again dug holes on the 21st, and

on the second attempted [sic] found and re-photographed the mud flowing through the sand." Later in this report, the general direction of the mud flow was said to be northwest. "It is extremely hard to estimate the size of the mud flow . . . There is no way of estimating if there is still a considerable amount of mud below the sand surface which is simply not visible." Finally, "AT&T also realizes that it will be responsible for mud which could potential [sic] appear in the marine environment at a later date."

71. By letter dated November 4, 1996, the CZM Committee transmitted a "Notice of Violation; Amended Cease and Desist Order; and Order for Remedial Action and Order Setting Hearing Date," Action No. CZX-74-1996. The CZM Committee ordered AT&TVI to submit to DPNR its plans for a series of activities related to the assessment of the releases into the environment and their cleanup. The required plan included, "a complete site assessment."

72. AT&T was given a hearing before the St. Croix Committee of the Coastal Zone Commission on November 6, 1996. After the hearing, AT&T acknowledged that "indications are that a complete clean up of the mud will be required."

73. AT&T sent out a scope of work for its drilling mud clean up on November 9, 1996. In that document, AT&T stated that the drilling material from the emergence zones was out to the 65 foot depth contour and that the clean up site covered approximately 40,000 square feet.

74. On November 26, 1996, by letter to AT&TVI's President and Chief Operating Officer, the St. Croix District Director of Permits directed AT&TVI to provide certain information and submit a comprehensive Corrective Action Plan for review and approval by the CZM Committee.